

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Mpower Communications Corp. (U-5859-C),

Complainant,

vs.

Pacific Bell Telephone Company (U-1001-C),

Defendant.

Case 02-09-045
(Filed September 27, 2002)

SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER

Summary

Pursuant to Rules 6(b)(3) and 6.3 of the Rules of Practice and Procedure, this Ruling sets forth the procedural schedule, assigns a presiding officer, and addresses the scope of the proceeding after the November 26, 2002 and February 19, 2003 prehearing conferences (PHC).

Background

Mpower Communications Corp. (Mpower) alleges that Pacific Bell Telephone Company (Pacific) engages in an unlawful rebate scheme by payments to pay telephone service aggregators, which are passed on to pay telephone service providers, that effectively enable those customers to obtain customer-owned pay telephone (COPT) service at below-tariff, below-cost rates in violation of Pub. Util. Code §§ 532 and 451. Mpower requests that the Commission terminate Pacific's alleged rebate arrangements that are the subject

of the complaint, order Pacific to rebill COPT customers for the full amount of any alleged rebates received, and fine Pacific.

Pacific answers that Mpower's causes of action are preempted by federal law and Federal Communications Commission (FCC) orders mandating the payment of commissions by carriers for non-sent paid calls to pay telephone service providers. Pacific denies that it has violated §§ 532 and 451 and that Mpower is entitled to the relief sought in the complaint.

Between the first and second PHCs, parties conducted discovery to determine whether there were disputed factual issues. Mpower states factual disputes exist, and this matter is set for hearing.

Scope of the Proceeding

In the filed pleadings and at the PHCs, the parties define their dispute as centering on three issues:

1. Whether Pacific's payments to pay telephone service aggregators when a pay telephone service provider migrates to Pacific's COPT service are unlawful rebates under Pub. Util. Code § 532.
2. Whether Pacific's payments to pay telephone service aggregators result in Pacific's cost of providing COPT service exceeding net charges for such service in violation of Pub. Util. Code § 451.
3. Whether Pacific's payments to pay telephone service aggregators are commissions mandated by federal law and FCC orders to pay telephone service providers for non-sent paid calls beyond the jurisdiction of this Commission.

Schedule

The schedule for this proceeding is as follows:

Event	Schedule
March 28, 2003	Complainant and Defendant serve opening testimony
April 11, 2003	Complainant and Defendant serve rebuttal testimony
April 23 and 24, 2003	Evidentiary hearings starting at 10:00 a.m., Wednesday, April 23 and 9:30 a.m. April 24, Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California
....	Concurrent briefs filed, per schedule to be set by later ruling/Projected submission date
....	Presiding officer's decision filed within 60 days of submission

In addition, parties may file motions for summary judgment on or before March 19, 2003.

Category of Proceeding and Need for Hearing

This ruling confirms this case as an adjudication scheduled for hearing, as preliminarily determined in the Instructions to Answer.

Designation of Presiding Officer

Administrative Law Judge Janice Grau will be the presiding officer.

Ex Parte Rules

Ex parte communications are prohibited in adjudicatory proceedings under Pub. Util. Code § 1701.2(b) and Rule 7 of the Commission's Rules of Practice and Procedure.

IT IS RULED that:

1. The scope of the proceeding is as set forth herein.
2. The schedule for this proceeding is as set forth herein.
3. The presiding officer will be Administrative Law Judge Grau.
4. This ruling confirms that this proceeding is an adjudication scheduled for hearing.
5. Ex parte communications are prohibited under Pub. Util. Code § 1701.2(b) and Rule 7 of the Rules of Practice and Procedure.

Dated February 21, 2003, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey

Assigned Commissioner

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Scoping Memo and Ruling of Assigned Commissioner on all parties of record in this proceeding or their attorneys of record.

Dated February 21, 2003, at San Francisco, California.

/s/ FANNIE SID
Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TTY# 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.